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## Washington State's Weakened Water Quality Standards Will Keep Fish Off the Table, Undermine Tribal Health

by **Catherine O'Neill**

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In recent weeks, [celebrations throughout the Pacific Northwest](#) marked the 40<sup>th</sup> anniversary of the “Boldt decision” – the landmark decision in the tribal treaty rights case, *U.S. v. Washington*. This decision upheld tribes’ right to take fish and prohibited the state of Washington from thwarting tribal harvest. Judge Boldt’s 1974 decision was intended to close a chapter in our history during which tribal fishers were harassed, beaten, and imprisoned for the act of fishing. In recognition of this anniversary, the Washington state legislature [voted to clear the criminal records](#) of all the tribal people who had been arrested for fishing – that is, for exercising the rights they had been guaranteed under the treaties. Yet the legacy of this shameful era may be revived if Washington’s Department of Ecology calculates water quality standards so as to reflect and perpetuate the time when tribes could not harvest salmon and other fish.

Water quality standards determine how much pollution will be allowed in our waters and, as a consequence, in the fish we all eat. Water quality standards are human health-based; they are currently set by means of risk assessment. Environmental agencies such as Ecology enlist risk assessment equations that determine how much of each toxic pollutant – PCBs, mercury, dioxins, PAHs – can safely be present in a water body so that humans who eat the fish from that water won’t risk cancer or suffer irreversible neurological damage or other harms. There are several variables in this equation. The value for each of these variables is determined by intertwined “science” and “policy” choices. Agency risk assessors consider the degree to which a given pollutant bio-accumulates in fish tissue; the amount of fish people can be expected to consume; the number of years over which people will likely consume fish at this rate; and other variables. The plausible value for

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Joe Feller	some of these variables spans two orders of magnitude; for other variables, the range is less dramatic, but there is still room for play.	Climate Change
Adam Finkel		Corporate Accountability and Tort Reform
Robert Fischman	And play is precisely what industrial polluters and their consultants do, as they take aim at each variable, with the ultimate goal of weakening the resulting water quality standards. I have discussed some of these efforts in the Pacific Northwest <a href="#">here</a> and <a href="#">here</a> , as well as <a href="#">here</a> .	CPRblog
Victor Flatt		Environmental Protection
Alyson Flournoy	The latest tactic - <a href="#">advanced by an industry consultant</a> - and currently embraced by Washington's Department of Ecology as its "preferred approach" - is to alter the standard assumption for adult bodyweight, <a href="#">increasing it from 70 kg to 80 kg</a> . This change to Ecology's (and EPA's) longstanding practice was suggested on the theory that tribal people, on average, currently have a higher bodyweight, i.e., 79 kg or 81 kg, according to two recent surveys in the Pacific Northwest. The "average American," too, it was suggested, is currently heavier than in prior years. The difference in the resulting water quality standards as a consequence of this change? The standards would be roughly 10% - 15% less protective.	Excessive Secrecy in Government
Matt Freeman		Food and Drug Safety
Bill Funk		Occupational Safety and Health Issues
Margaret Giblin		Publications and Books
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James Goodwin	Which means that the fish will be that much less safe to eat - or, to put a finer point on it: tribal people seeking to put a healthy, uncontaminated meal of fish on their table will be able to do so less often.	
Elizabeth Grossman		
Emily Hammond	But tribes know well the connection between tribal members' health and their ability to obtain and consume traditional foods. For the fishing peoples throughout the Pacific Northwest, salmon and other fish and shellfish are at the center of a traditional diet. <a href="#">As documented by a recent study</a> of one of the fishing tribes, "[t]he loss of traditional food sources is now recognized as being directly responsible for a host of diet-related illnesses among Native Americans, including diabetes, obesity, heart disease, tuberculosis, hypertension, kidney troubles, and strokes." These illnesses are currently a matter of grave concern throughout Indian Country. American Indians and Alaska Natives now suffer extraordinary rates of diabetes - <a href="#">two to three times that of all other racial/ethnic populations combined</a> . Some 1,300 patients with diabetes require the services of the Yakama Indian Health Clinic; the incidence of diabetes in the <a href="#">Yakama Nation is 14.8%</a> - double that in the state of Washington. The relatively higher bodyweights recorded in contemporary surveys of tribal people in the Pacific Northwest coincide with the depletion and contamination of the fish resource. This increase is also a direct legacy of the days in which tribal fishers were harassed and their fish frightened away; tribal nets were slashed; and tribal boats and gear were destroyed or confiscated. With tribal fishers in jail, there was no fish to put on their family's table. Without gear - and no fish to sell to buy new gear - some fishers were forced to turn to other work. Together, these forces have worked to deprive tribal people of their salmon and other traditional foods and have fueled a public health crisis.	
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Patrick MacRoy	The solution is not to take one element of that crisis - increased bodyweight - as a "given," and therefore a basis for environmental agencies to permit more	

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contaminants in fish. Rather, the solution is to see the bigger picture: human health-based standards ought not be manipulated so as to undermine human health. They shouldn't permit *greater* contamination of the very foods that are recommended as healthful ways to combat diabetes, obesity, and other diet-related conditions. The perversity of Ecology's preferred approach is underscored by the fact that the [National Indian Health Board](#) and [the Centers for Disease Control and Prevention \(CDC\)](#) are hard at work in the opposite direction. They have devoted funds and devised programs that seek to enable, not thwart, tribal efforts to access and consume traditional foods as a means to decrease the incidence and impact of diabetes, obesity, and other conditions. For example, the CDC has partnered with 17 tribes to launch traditional foods programs, which seek to encourage *increased* intake of these tribes' first foods in order to restore tribal health and well-being.

Ecology, it is true, can point to contemporary data that document tribal people's higher bodyweights to justify its preferred approach. But Ecology would be invoking this data in a vacuum, turning a blind eye to the historical context in which this increase has occurred. Ecology would also need to ignore the implications of this choice for tribal members' future health, including tribes' ability to combat the scourge of diabetes and other diet-related illnesses in their communities.

While the risk assessment method may give Ecology the latitude to alter the bodyweight variable as a matter of science and policy, there is a real question whether Ecology should do so as a matter of environmental justice. Such insensitivity to context and effect ought not characterize today's governmental decisions affecting the fish – and affecting the tribal people who depend on the fish.

**Catherine O'Neill**, CPR Member Scholar;  
Professor of Law, Seattle University School of Law. [Bio.](#)

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